

REFERENCE TITLE: law enforcement officer discipline; appeal

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

SB 1453

Introduced by
Senator Flake; Representatives Reagan: Gallardo, Nelson

AN ACT

AMENDING SECTIONS 38-1003, 38-1004 AND 38-1007, ARIZONA REVISED STATUTES;
RELATING TO LAW ENFORCEMENT OFFICER MERIT SYSTEM PROCEDURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 38-1003, Arizona Revised Statutes, is amended to
3 read:

4 38-1003. Powers and duties of council

5 The council, pursuant to recognized merit system principles of public
6 employment, shall from time to time:

7 1. Classify or reclassify all positions occupied by law enforcement
8 officers within the branch of government employing the officer and recommend
9 schedules of salary and other compensation payable for the officer
10 classification.

11 2. Fix and refix standards and qualifications of all positions so
12 classified.

13 3. Provide a plan for fair and impartial selection, appointment,
14 retention and separation or removal from service by resignation or dismissal
15 of all classified law enforcement officers. ~~The provisions of~~ Paragraph 4
16 ~~shall apply OF THIS SECTION APPLIES~~ to appointments.

17 4. Provide a plan for promotion of law enforcement officers ~~which~~
18 ~~shall give THAT GIVES~~ appropriate consideration to qualifications, record of
19 performance, seniority and conduct within the field of law enforcement.
20 Vacancies within a department shall be filled whenever possible by promotion
21 within a department and shall be on the basis of competitive examination. If
22 a vacancy occurs within a department the council, upon request, shall certify
23 to the head of the department the names of five officers in the order of
24 their relative excellence in the competitive examination from which certified
25 list the appointment or promotion may be made.

26 5. Adopt rules necessary for the orderly administration of ~~the~~
27 ~~provisions of~~ this article.

28 6. Hear and review appeals from any order of the department head in
29 connection with suspension, demotion or dismissal of a classified law
30 enforcement officer **ONLY IN A CASE WHERE THE APPEAL IS THAT THE ORDER WAS**
ARBITRARY OR MADE WITHOUT REASONABLE CAUSE. **THE COUNCIL SHALL DISMISS ALL**
OTHER APPEALS THAT ARE NOT BASED ON THE REASONS PRESCRIBED BY THIS PARAGRAPH.
31 If the order of the department head was for a suspension greater than sixteen
32 hours, demotion or dismissal and the council **DETERMINES THAT THE ORDER WAS**
ARBITRARY OR MADE WITHOUT REASONABLE CAUSE AND exonerates the officer, the
33 council may award, in whole or in part, the reasonable costs and attorney
34 fees that the employee incurred in connection with the appeal. The award of
35 attorney fees by the council shall not exceed ten thousand dollars. An award
36 of attorney fees does not apply if either of the following applies:

37 (a) The order of the department head was not for disciplinary purposes
38 but was for administrative purposes such as a reduction in force.

39 (b) The disciplinary action related to off-duty activities unrelated
40 to the required duties of the law enforcement officer. The council's
41 determination shall be final except on appeal as provided in section
42 38-1004. If the department head appeals the decision of the council, the

1 council's award of any costs or attorney fees to an officer shall be stayed
2 pending the conclusion of the appeal. If the department head's decision is
3 upheld on appeal, the award of costs or attorney fees in favor of the officer
4 shall be reversed.

5 Sec. 2. Section 38-1004, Arizona Revised Statutes, is amended to read:

6 **38-1004. Appeals: hearings**

7 A. A classified law enforcement officer who is suspended, demoted or
8 dismissed by the department head, after a hearing and review before the merit
9 system council, may have the determination of the council reviewed upon writ
10 of certiorari in the superior court of the county in which the law
11 enforcement officer resides. If the determination of the council is
12 overruled by the court, the law enforcement officer shall be reinstated in
13 the officer's position and the officer shall be reimbursed for any
14 compensation withheld pending determination by the council and court.

15 B. If the order of the department head was for a suspension greater
16 than sixteen hours, demotion or dismissal and the court exonerates the
17 officer, the court may award, in whole or in part, the reasonable costs and
18 attorney fees that the officer incurred in the court proceedings. The award
19 of attorney fees by the court shall not exceed fifteen thousand dollars. An
20 award of attorney fees does not apply if either of the following applies:

21 1. The order of the department head was not for disciplinary purposes
22 but was for administrative purposes such as a reduction in force.

23 2. The disciplinary action related to off-duty activities unrelated to
24 the required duties of the law enforcement officer. If the department head
25 appeals the decision of the court, the court's award of any costs or attorney
26 fees to an officer shall be stayed pending the conclusion of the appeal. If
27 the department head's decision is upheld on appeal, the award of costs or
28 attorney fees in favor of the officer shall be reversed.

29 C. If a law enforcement officer of a county, city or town described in
30 section 38-1007 appeals from a decision of a department head in connection
31 with the law enforcement officer's suspension greater than sixteen hours,
32 demotion or dismissal and the county, city or town maintains a merit system
33 or civil service plan for its employees, and the merit system or civil
34 service plan appeals board DETERMINES THAT THE ORDER WAS ARBITRARY OR MADE
35 WITHOUT REASONABLE CAUSE AND exonerates the officer, the merit system or
36 civil service plan appeals board may award, in whole or in part, the
37 reasonable costs and attorney fees that the law enforcement officer incurred
38 in connection with the appeal. The amount of the award by the merit system
39 or civil service plan appeals board shall not exceed ten thousand dollars.
40 If the department head appeals the decision of the merit system or civil
41 service appeals board, the award of attorney fees shall be stayed pending the
42 conclusion of the appeal. If the officer appeals to court the decision of
43 the merit system or civil service plan appeals board, or of the city or town
44 council or board of supervisors if the city, town or county has no such
45 board, and the court exonerates the officer, the court may award, in whole or

1 in part, the reasonable costs and attorney fees that the law enforcement
2 officer incurred in connection with the appeal. The award of attorney fees
3 by the governing body or court shall not exceed fifteen thousand dollars. An
4 award of attorney fees under this subsection does not apply if either of the
5 following applies:

6 1. The order of the department head was not for disciplinary purposes
7 but was for administrative purposes such as a reduction in force.

8 2. The disciplinary action related to off-duty activities unrelated to
9 the required duties of the law enforcement officer. If the department head
10 appeals the decision of the court, the court's award of any costs or attorney
11 fees to an officer shall be stayed pending the conclusion of the appeal. If
12 the department head's decision is upheld on appeal, the award of costs or
13 attorney fees in favor of the officer shall be reversed.

14 D. THE APPLICABLE ORGANIZATION OF ANY COUNTY, CITY OR TOWN DESCRIBED
15 IN SECTION 38-1007 THAT HEARS AND REVIEWS APPEALS FROM ANY ORDER OF A
16 DEPARTMENT HEAD IN CONNECTION WITH THE SUSPENSION, DEMOTION OR DISMISSAL OF A
17 CLASSIFIED LAW ENFORCEMENT OFFICER SHALL HEAR AND REVIEW AN APPEAL ONLY IN A
18 CASE WHERE THE APPEAL IS THAT THE ORDER WAS ARBITRARY OR MADE WITHOUT
19 REASONABLE CAUSE. THE APPLICABLE ORGANIZATION SHALL DISMISS ALL OTHER
20 APPEALS THAT ARE NOT BASED ON THE REASONS PRESCRIBED BY THIS SUBSECTION.

21 D. E. A department head ~~shall have the right to~~ MAY have all council
22 policies and decisions reviewed upon writ of certiorari in the superior court
23 of the county in which the law enforcement officer resides and legal counsel
24 for the department head shall be provided by the county or city attorney in
25 whose jurisdiction the department lies.

26 Sec. 3. Section 38-1007, Arizona Revised Statutes, is amended to read:
27 38-1007. Exemptions

28 Except as provided by section 38-1004, ~~subsection~~ SUBSECTIONS C AND D,
29 ~~the provisions of~~ this article ~~shall~~ DOES not apply to:

30 1. A county having a population, according to the last federal census,
31 of less than two hundred fifty thousand inhabitants, unless the board of
32 supervisors of such county passes a resolution adopting the provisions of
33 this article.

34 2. A city or town with a population of less than fifteen thousand
35 inhabitants according to the last federal census, or with a full-time police
36 department of less than fifteen men, unless the city council of such city or
37 town passes an ordinance adopting the provisions of this article.

38 3. A city or town in which there is maintained a merit system or civil
39 service plan for its employees.